

HAGNER & ZOHLMAN, LLC

Commerce Center
1820 Chapel Ave. West
Suite 160
Cherry Hill, New Jersey 08002
(856) 663-9090
Attorney for: Plaintiff
By: Thomas J. Hagner, Esquire

ROBERT S. CONRAD, SR.

Plaintiff,

vs.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 1:08-cv-05416

THE WACHOVIA GROUP LONG-
TERM DISABILITY PLAN;

Defendant.

**DECLARATION OF THOMAS J. HAGNER, ESQ.
IN SUPPORT OF
SUPPLEMENTAL BRIEF**

THOMAS J. HAGNER, of full age, hereby certifies:

1. I am a partner with the firm of Hagner & Zohlman, L.L.C., attorneys for the Plaintiff and submit this Certification in support of Plaintiff's Supplemental Brief in support of Notice of Motion for Summary Judgment.
2. Exhibit 1 is a true and correct copy of Medical Report of Dr. Barnish dated November 3, 2003. (Attachments to the appeal dated 4/25/07 Plaintiff's Statement of Uncontested Material Facts ¶76; Exhibit 29)
3. Exhibit 2 is a true and correct copy of letter of Dr. Petrunico undated with notes through 9/8/03. (Attachments to the appeal dated 4/25/07 Plaintiff's Statement of Uncontested Material Facts ¶76; Exhibit 29)

4. Exhibit 3 is a true and correct copy of Attending Physician Statement submitted by Dr. Petruncio dated November 19, 2004.

5. Exhibit 4 is a true and correct copy of medical report of Dr. Thomas F. Morley dated March 4, 2004.

6. Exhibit 5 is a true and correct copy of Medical report of Dr. Thomas F. Morley dated March 17, 2004.

7. Exhibit 6 is a true and correct copy of Medical report of Dr. Thomas F. Morley dated April 7, 2004.

8. Exhibit 7 is a true and correct copy of Medical report of Dr. Thomas F. Morley dated July 22, 2004.

9. Exhibit 8 is a true and correct copy of Medical report of Dr. Thomas F. Morley dated September 16, 2004.

10. Exhibit 9 is a true and correct copy of memo from Harriot Michael, Liberty Mutual Appeal Review Consultant dated March 28, 2005.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed October 11, 2010.

BY: /s/ Thomas J. Hagner
Thomas J. Hagner, Esq.

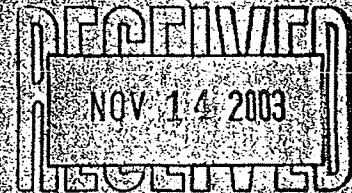
EXHIBIT 1

GARDEN STATE INFECTIOUS DISEASE ASSOCIATES, P.A.

Glendale Executive Campus • 1000 White Horse Road • Suite 608 • Voorhees, New Jersey 08043 • (856) 566-3190 • Fax: (856) 566-1904
Board Certified in Internal Medicine and Infectious Diseases*

David V. Condoluci, D.O., F.A.C.O.I.
Michael J. Barnish, D.O., F.A.C.O.I.*
Judith A. Lightfoot, D.O.*

November 3, 2003



George J. Petruncio, M.D.
Fries Mill Pavilion
188 Fries Mill Road
Suite E1
Turnersville, NJ 08012

Reference: Robert Conrad

Dear George:

Today, I had an opportunity to see Mr. Conrad in consultation. Mr. Conrad is a 48-year-old male stockbroker who has been under a significant amount of stress over the past several months to years. Approximately to months ago, he began to describe what he calls a raspy voice and progressive fatigue with sweats. He denies any fevers per se, and, in fact, he was afebrile today. He does admit to poor sleep over the past several months because of his work, and has never been very physically active.

He has had an extensive work-up performed by you which shows no real evidence of persistent viral infections including Epstein-Barr or coxsackievirus and his Lyme serologies are all negative. He did have an elevated sed rate of 24 in September, but this had normalized to three by October. His CBC is essentially normal, West Nile virus is normal, liver functions and kidney function are all normal as well. He did have a CAT scan of the chest and abdomen which were unremarkable. He denies any history of sinus problems. He has no drug allergies.

Mr. Conrad initially lost 15 pounds two months ago, but during two courses of antibiotics, when his appetite improved, he gained the weight back and presently is 325 pounds at a height of 5' 10 1/2". Mr. Conrad tells me that has been set-up for a sleep study in Woodbury, but has not pursued it to date. He states he snores, but does not know if it is any worse of late. He does awaken several times during the night which is a new phenomenon over the last several months.

Liberty/Conrad 250

George J. Petruncio, M.D.
Reference: Robert Conrad
November 3, 2003
Page Two

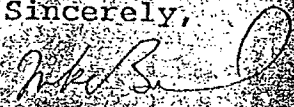
On physical examination, his heart is regular rate and rhythm and his lungs are clear to auscultation. He has no joint abnormalities or rashes. There are no trigger points suggestive of fibromyalgia. The rest of his examination is unremarkable. He has a BP of 156/82.

Impression: Fatigue most likely secondary to stress with a high concern for sleep apnea. Less likely, but also needing to be ruled-out is chronic sinusitis. Mr. Conrad's appetite is also poor so nutritional deficiency may certainly be playing a role.

At this point what I would recommend is a multi-vitamin, as well as, pursuing the sleep study. He states that he will do so. I recommended a multi-vitamin which he will pick-up at a pharmacy and I gave him a script for a CAT scan of the sinuses.

I would like to thank you for allowing me to see Mr. Conrad today, and please let me know if there is any further information that might help in determining the etiology for his symptoms.

Sincerely,


Michael Barnish, D.O.

*Considered
C. Sinusitis
Discharge
Mike*

Liberty/Conrad 251

EXHIBIT 2

George J. Petruncio, M.D.
 188 Fries Mill Road, Suite E-1
 Turnersville, NJ 08012

Dear Mr. Hagner:

Robert Conrad has been my patient for over a ten year period. In September, 2003 Mr. Conrad experienced the onset of symptoms of depression, fatigue and malaise. Prior to September, 2003, he was healthy, enthusiastic and quite successful in his position as a stockbroker. Since the onset of symptoms in September, 2003 he has experienced spontaneous diaphoresis of unknown etiology, depression, myalgias, sleep apnea, etc. His attempts to return to work only aggravated his condition with a result in total disability. He has undergone multiple testing and has been seen by multiple specialists with the test results being inconclusive and the specialist diagnosis being fibromyalgia and depression and diaphoresis of unknown etiology. The diagnosis code that Mr. Conrad was listed by before the insurance was miscoded. This is clearly a reactive depression from his disability not a neurotic depression of which Mr. Conrad exhibited no signs prior to. This will prejudice any opinions made since this diagnosis was made in error. My attempts to contact Aetna have been to no avail. This **must** be corrected immediately. Mr. Conrad still continues with symptoms. Despite the return to part-time work Mr. Conrad continues to see ancillary support personnel i.e. chiropractors and is attending an in-house therapeutic spa twice daily which improves his ability to continue his job. Any further questions please contact me George J. Petruncio, M.D., Phone number 856-875-7700.

Sincerely,



A

PATIENT NAME

Bob Conrad



BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

T

P

R

Age

48

Wt.

305

BP

128

76

12-30-02

97.8

64

17

prescription refills

n. sub for 2w

meds

NKDA

Vasotec

20mg

✓

Xanax

1mg TID PRN

✓

Zoloft

60mg

Allopurinol

200mg

Verapamil

240.5u

✓

128/78 792.8 144

my skin
in 5.0

Liberty/Conrad 239

n. 12/30/02

2.1.17 (15.7)

n. 12/30/02

2.1.17 240.5u

n. 12/30/02

Xanax 1mg

Return ___ prn ___ days ___ wks

PATIENT NAME

Robert Conrad



BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

12-1-03

T 98.4 P 68 R 17

Age 48

Wt. 304 3/4

BP 142/88

Follow up

meds

vasotec 20mg

Xanax 1mg TID PRN

zoloft 100mg

allaprilol 200mg

Cipre 750g - 1/2

142/88 / 98.4 / 68

by ch

in

in pr. old

Cipre
750

in An x 10

Xanax

Liberty/Conrad 240

Return ___ prn ___ days ___ wks

PATIENT NAME

Robert Conrad

BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

11/29/03

T

P

R

Age 48

Wt. 304

BP 138/84

98.6 80 17

follow up

meds

vasotec 20mg

xanax 1mg TID PRN

allopurinol 200mg

zoloft 100mg

c 138/84 78.6 17

4/12

has a

P. 10/11

H. 10/11 B. 10/11

Liberty/Conrad 241

P. 10/11

c 138/84 78.6 17

H. 10/11

c 138/84 78.6 17

Return ___ prn ___ days ___ wks

PATIENT NAME ROBERT KAS

BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

T

P

R

Age

Wt.

BP

11/22/07

98¹⁸⁰
56

17

309

170/100

170/100 1908
up cl
in 27" 1

Jan 20⁰
unstable 40
20/1/100g

H1 HTN

1/2/1/100g
unstable
unstable 50
240

H2 anxiety

1/2/1/100g
unstable
unstable 50
240

H3 Depression 100

2.1/1/100g
100g
56 40
11/12

Liberty/Conrad 242

Return ___ prn ___ days ___ wks

PATIENT NAME

Robert Conrad

BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

T

P

R

Age 48

Wt. 312

BP 150/90

(2)

11/15/03

986 74

will having
anxiety attacks
wakes up in
middle of night

did not get sleep study

150/90 78.6 170

my chest
is tight

11/17/03 At Home

11/17/03 At Home

11/17/03 At Home

11/17/03 At Home

11/17/03 At Home

11/17/03 At Home

11/17/03 At Home

11/17/03 At Home

Liberty/Conrad 243

Return ___ prn ___ days ___ wks

PATIENT NAME

Robert Conrad



BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

11/8/03

T

P

R

Age

48

Wt.

312

BP

130/80 5

99 70

prescription renewal

Sinusitis

flu shot given

2/34 5/100

by Dr
m

Plan

H. Davis

2 X-ray

L. Davis

2-1-1
5-1-1

1/11/04

1-1-1

✓

Sleep Study

Liberty/Conrad 244

Return ___ prn ___ days ___ wks

PATIENT NAME

ROBERT CONRAD

BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

10-7-03 T P R Age: Wt: 322 BP: 126/72 RR: 20
 8% 78 12 Needs Xanax refills.

Meds:

Lexoramin 25mg.

Vasotec 20mg.

Xanax 1mg. TID PRN.

Allopurinol 200mg.

Tylenol.

2 12 C

10-1 11/13

4

h m

11

g m

1

4

Liberty/Conrad 245

Return ___ prn ___ days ___ wks

PATIENT NAME ROBERTCONRAD

BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

9/15/03

T

P

R

Age

Wt.

BP

132/90 (P) (S)

99.8° 68 16

- follows up from last
O.V. disordered Abx.
Not feeling better. Because
all week with dry cough &
cold sweats, fatigue, lack of
appetite.

MEDS:

Tenormin 25g

Vasotec 20g

Xanax 1g TID PRN

Allopurinol 200g

Tylenol

Ativan

Z. psycho

✓ 132/90 109.8 68 16

Wg. P
Wt. 16

Symptoms

chills

a dry

productive cough

every day

Liberty/Conrad 247

Return ___ prn ___ days ___ wks

PATIENT NAME

ROBERT

CONRAD

BIRTHDATE

PAGE

PROB.
NO.

DATE

Subjective

Objective

Assessment

Plans

S.O.A.P. PROGRESS NOTES

9/11/03

T

P

R

Age

Wt. 330 lbs BP 138/86 (R) (SE)

101.0° 84 16

- cold ex. achy, cough - non-productive since Sat. Fever abt

MEDS:

Tenormin 25

Vasotec 20

Xanax 1mg TID PRN

Allopurinol 200

Tylenol

Ny-Qul

138/86 75/47 9/11/03

C. of

N. V. M.

Liberty/Conrad 248

Return ___ prn ___ days ___ wks

EXHIBIT 3



**Liberty
Mutual.**

RESTRICTIONS FORM
TO BE COMPLETED BY THE ATTENDING PHYSICIAN

Liberty Life Assurance Company of Boston
Disability Claims
P.O. Box 242484
Charlotte, NC 28224-2484
Phone No.: (800) 291-0112
Secure Fax No.: (888) 443-4212

Return To: JANICE BORNER

EMPLOYEE/CLAIMANT NAME: ROBERT CONRAD

S.S. NO:

CLAIM NO: 1248676

DATE OF BIRTH: 2/26/1955

EMPLOYER/SPONSOR: WACHOVIA CORPORATION

IN ORDER TO DETERMINE BENEFITS FOR THE ABOVE NAMED CLAIMANT, ADDITIONAL INFORMATION IS REQUIRED. PLEASE RESPOND TO THE FOLLOWING QUESTIONS OR STATEMENTS AND FAX TO LIBERTY MUTUAL. THIS INFORMATION IS REQUESTED WITHOUT EXPENSE TO LIBERTY MUTUAL.

DATE FIRST TREATED: 9/15/03 HOSPITAL ADMIT DATE: _____

DISCHARGE DATE: _____

DATE LAST TREATED: 11/15/04 SURGICAL PROCEDURE(S): _____

SURGERY DATE(S): N/A CPT CODE: _____

DATE OF NEXT SCHEDULED APPOINTMENT: _____

DATE PATIENT ADVISED TO CEASE WORK: 8/2/04 * ESTIMATED RTW DATE: _____

FREQUENCY OF VISITS: _____ WEEKLY _____

MONTHLY _____

OTHER: Bi-weekly

DIAGNOSIS AND CONCURRENT CONDITIONS WITH ICD 9 CODE:

Chronic fatigue syndrome

uncontrolled hypertension

anxiety/depression

Continues on current medication therapy

Out of work

severe obstructive sleep apnea

PLEASE DESCRIBE ANY/ALL RESTRICTIONS AND LIMITATIONS YOU HAVE IMPOSED FROM _____ THROUGH _____

PLEASE DESCRIBE THE OBJECTIVE MEDICAL FINDINGS THAT SUPPORT THE ABOVE RESTRICTIONS AND LIMITATIONS.

Sleep study - positive for severe apnea

lab findings, physical exam

PLEASE DESCRIBE IN DETAIL YOUR TREATMENT PLAN INCLUDING MEDICATIONS, DIAGNOSTIC TESTING AND TREATMENT MODALITIES:

multiple medication therapy, lab, sleep

specialist consults + treatment

HAS YOUR PATIENT RESPONDED TO THIS TREATMENT PLAN? (PLEASE PROVIDE PROGRESS MADE):

has responded to some aspects

PLEASE FORWARD COPIES OF YOUR OFFICE NOTES AND TEST RESULTS FOR THIS PATIENT FOR THE PERIOD FROM 10/04 THROUGH 11/19/04 (per request).

George J. Petrucci MD Degree/Specialty Family Practice SS No. or Tax ID 223012673

188 Fries Mill Rd Ste E1 Street Address (850) 875-7700 Telephone No. (850) 362-0428 Fax No.

Turnersville, NJ 08012 City/State/Zip Code [Signature] Signature 11/19/04 Date

DP 446 Rev. 06/01

Liberty/Conrad 1161

EXHIBIT 4

SOM-Sewell Internal Medicine

Kennedy Professional Center #A-1 445 Hurffville-Crosskeys Road Sewell, NJ 08080
(856) 589-6728 Fax: (856) 258-1266

March 31, 2004

Page 1

Chart Document

ROBERT CONRAD
49 Year Old Male DOB 02/23/1956 MRN 583825 Home 856-515-1739
Address: 188 Fries Mill Road Turnersville, NJ 08012

03/06/2004 - Transcription: .

Provider: Thomas Morley DO, FCCP, FACP

Location of Care: School of Osteopathic Medicine

March 4, 2004

George J. Petruncio, M.D.
Fries Mill Pavilion, Suite E1
188 Fries Mill Road
Turnersville, NJ 08012

RE: Robert Conrad

Dear Dr. Petruncio:

Thank you for the opportunity to evaluate your patient, Mr. Robert Conrad, in our office today regarding his possible sleep apnea syndrome.

As you know, the patient is a 49-year-old male, who complains of excessive snoring and constant fatigue over several years. He states that his symptoms have been worsened since September 2003. He was hospitalized with weight loss, diarrhea, and some chest discomfort. He had an extensive workup including cardiac catheterization. This showed some mild atherosclerotic plaques in his coronary circulation and otherwise nothing significant.

At this time, his major complaint is excessive fatigue, in spite of the fact, he goes to bed at 9:00 p.m. and awakens at 7:00 a.m. In spite of the fact, he sleeps most of the time, he still feels fatigued in the morning. He goes to sleep after lying in the bed for about an hour. He will have two nocturnal awakenings usually associated with the need to urinate. He has no nocturnal awakenings, due to shortness of breath or gasping for air. He is always tired in the morning when he awakens. He requires naps to maintain his daytime function. He will fall asleep at night watching television or reading. He denies falling sleep while driving, during conversation or during meals. He does not have any history of cataplexy, sleep paralysis or sleep hallucinations. He has no signs or symptoms suggestive of restless legs syndrome or periodic leg movement disorder. He does not sleep walk or sleep talk.

PAST MEDICAL HISTORY: Positive for hypertension and depression.

PAST SURGICAL HISTORY: Positive for cholecystectomy.

ALLERGIES: Admitted to iodine.

MEDICATIONS: Include enalapril, verapamil, Zoloft, allopurinol, and Xanax.

HABITS: He admits to smoking about three quarters pack of cigarettes per day for 20 years. He quit cigarette smoking, about a year ago. He used alcohol socially in the past. He quit using alcohol in September 2003. He works a

Liberty/Conrad 1283

discussed

SOM-Sewell Internal Medicine

Kennedy Professional Center #A-1 445 Hurffville-Crosskeys Road Sewell, NJ 08080
(856) 589-6728 Fax: (856) 258-1266

April 30, 2004
Page 2
Chart Document

ROBERT CONRAD, M.D. DOB: 04/26/1955 RN: 88892

continued use of the Flonase for nasal congestion. I am optimistic that with treatment of his hypersomnolence and cognitive dysfunction will improve. I want to see him again in 3 months and we will adjust therapy as necessary. If he continues to have symptoms, I may add some Provigil to his medical regimen.

Again, thank you for the opportunity to evaluate this very nice gentleman.

Sincerely,

Thomas F. Morley, D.O., F.C.C.P., D.A.B.S.M.
Professor of Medicine
Diplomate, American Board of Sleep Medicine

TFM/mts/spry/kap

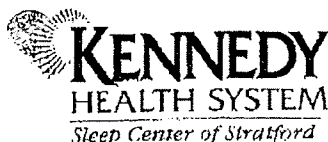
d: 04/22/2004 1312 PST

t: 04/23/04 1105 EST

23141951

Signed by Thomas Morley DO, FCCP, FACOI on 04/29/2004 at 6:05 PM

EXHIBIT 5



19 East Laurel Road
Stratford, NJ 08084
TEL: 856-346-7896

UMDNJ - SOM
DIVISION OF PULMONARY AND
CRITICAL CARE MEDICINE
J.C. Giudice, D.O R. Griesback D.O
T.F. Morley D.O A. Vasoya, D.O.

Laboratory Directors:

Thomas F. Morley, D.O.
Amita Vasoya, D.O.

Date: 03/17/04 Sex: Male
DOB: 02/26/55 Age: 49
Height: 5'11" Weight: 295
Body Mass Index:
MRUN: 0856493

Studies: Nocturnal polysomnogram

PATIENT NAME: CONRAD, ROBERT

REFERRING PHYSICIAN: Dr. George Petruncio

SLEEP PHYSICIAN: Dr. Thomas Morley

INDICATION: The patient is a 49-year-old whose chief complaint is one of excessive daytime fatigue and snoring. He has fairly adequate total sleep time, however, in spite of this he feels fatigued in the morning. He has several nocturnal awakenings per night. He requires naps to maintain his daytime function. He will fall asleep watching television or reading. However, he denies frankly pathologic sleep. He was sent to the laboratory to determine if he has significant obstructive sleep apnea syndrome.

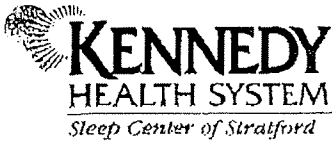
METHODOLOGY: A standard nocturnal polysomnogram montage was utilized with two channels of EOG, left and right, referenced to the opposite ear, two channels of EEG, C4-A1, O2-A1. A body position monitor was in place. A chin EMG was used for REM staging. A microphone was used for snoring. Nasal airflow was measured with a nasal thermistor. A modified V5 electrocardiographic electrode was used for EKG analysis. Right and left anterior tibialis electrodes were used for leg kicking. Respiratory effort was assessed with thoracic and abdominal pneumobelts. Pulse oximeter was used to monitor oxygen saturation in a continuous fashion. Sleep recording was performed using the Sandman System and was hand-scored.

RESULTS: The patient's total recording time was 507 minutes, total sleep period was 453 minutes. Total sleep time was 330 minutes. Sleep efficiency was reduced to 65.2%. Sleep latency was prolonged at 54 minutes. REM latency was prolonged at 392 minutes.

Sleep architecture indicated that 7.7% of his total sleep time was spent in Stage I, 84% in Stage II. No Stage III or IV sleep was identified. REM sleep reduced to 8.3% of total sleep time. I would note that the patient had significant obstructive sleep apnea which may have contributed to his sleep architecture disturbance. In addition, he was on Zolof which may also have caused some REM suppression.

The patient's body position monitoring indicated that 6.9% of total sleep time was spent in the supine position, 39.6% in right-sided sleep, 37.7% in left-sided sleep and 15.7% in prone sleep.

Liberty/Conrad 1234



19 East Laurel Road
Stratford, NJ 08084
TEL: 856-346-7896

The patient had a total of 70 obstructive apneas and 142 obstructive hypopneas with a respiratory disturbance index of 38.5 which is severely elevated. During REM sleep his index was less at 26.2. During supine sleep the RDI almost doubled to 65.5.

He had significant oxygen desaturation. The lowest oxygen saturation noted was 76% during non-REM sleep. Overall he spent 2.3% of his total sleep time with saturations less than 90%.

The patient had no significant cardiac arrhythmias nor did he have any significant periodic leg movements throughout the study.

CONCLUSION: The patient demonstrates severe obstructive sleep apnea syndrome with mild oxygen desaturation. His respiratory disturbance index was 38.5. The patient did not demonstrate significant cardiac arrhythmias or periodic leg movements throughout the study.

RECOMMENDATIONS:

It is recommended that the patient undergo CPAP titration to treat his significant obstructive sleep apnea syndrome.

He could benefit from significant weight reduction.

He should not drive if he is sleepy.

He should be informed of the health consequences associated with untreated sleep apnea including heart disease, hypertension, strokes and accidents.

The patient should follow-up with his primary physician, Dr. Petruncio, and with Dr. Morley in the Sleep Clinic.

Dictated by: Thomas F. Morley, DO, FCCP, DABSM
Diplomate of The American Board of Sleep Medicine

Signed by: Thomas F. Morley, DO, FCCP, DABSM on 03/24/2004 @ 03/24/2004 07:14:50

TFM/kk

cc: Dr. Petruncio
Dr. Morley

EXHIBIT 6

UMDNJ - SOM
DIVISION OF PULMONARY AND
CRITICAL CARE MEDICINE
J.C. Giudice, D.O. R. Griesback D.O.
T.F. Morley D.O. A. Vasoya, D.O.

Laboratory Directors:
Thomas F. Morley, D.O.
Amita Vasoya, D.O.

Date: 04/07/04 Sex: Male
DOB: 02/26/55 Age: 49
Height: Not Given Weight: 303
Body Mass Index: Not Given
MRUN: 0856493

Studies: Nocturnal polysomnogram with CPAP titration

PATIENT NAME: CONRAD, ROBERT

REFERRING PHYSICIAN: Dr. George Petruncio

SLEEP PHYSICIAN: Dr. Thomas Morley

INDICATION: The patient has previously documented obstructive sleep apnea syndrome. His respiratory disturbance index was 38.5 on a nocturnal polysomnogram performed on 3/17/04. He was sent to the laboratory for CPAP titration.

METHODOLOGY: A standard nocturnal polysomnogram montage was utilized with two channels of EOG, left and right, referenced to the opposite ear, two channels of EEG, C4-A1, O2-A1. A body position monitor was in place. A chin EMG was used for REM staging. A microphone was used for snoring. Nasal airflow was measured with a nasal thermistor. A modified V5 electrocardiographic electrode was used for EKG analysis. Right and left anterior tibialis electrodes were used for leg kicking. Respiratory effort was assessed with thoracic and abdominal pneumobelts. Pulse oximeter was used to monitor oxygen saturation in a continuous fashion. Sleep recording was performed using the Sandman System and was hand-scored. The patient underwent CPAP titration by standardized protocol.

RESULTS: The patient's total recording time was 364 minutes, total sleep period was 354 minutes. Total sleep time was 281 minutes with a sleep efficiency of 77.0% which is reduced. The sleep latency was normal at 10.3 minutes. REM latency was prolonged at 223 minutes. The patient had only one REM cycle throughout the night.

Sleep architecture indicated that Stage I occupied 8.5% of total sleep time, Stage II was 87.5% of total sleep time. No Stage III or IV sleep was identified. REM sleep was reduced at 3.9% of total sleep time.

Body position monitoring indicated that patient spent 48.3% of his total sleep time in the supine sleep, 31.9% in right-sided sleep, 19.8% in left-sided sleep. No prone sleep was identified.

The patient did not demonstrate any significant periodic leg movements or oxygen desaturation throughout the study.

The patient was started on nasal CPAP of 5 cm of water pressure and gradually increased to 9 cm of water pressure. For a short time he was placed on BIPAP at 9/5. It appeared that CPAP at 9 was adequate to

control his sleep disordered breathing. His respiratory disturbance index at this level was 0. He did have significant REM and supine sleep at this level. This would indicate a fairly adequate CPAP titration. Overall he tolerated the CPAP fairly well.

CONCLUSION: The patient has previously documented obstructive sleep apnea syndrome with a respiratory disturbance index of 38.5. CPAP titration tonight indicated that nasal CPAP at 9 cm of water pressure was adequate to control his sleep disordered breathing, prevent snoring and prevent oxygen desaturation. He did not demonstrate significant periodic leg movements or cardiac arrhythmias.

RECOMMENDATIONS:

It is recommended that the patient be started at home with nasal CPAP at 9 cm of water pressure.

The patient could clearly benefit from some degree of weight loss.

The patient should not drive if he is sleepy.

The patient should be informed of the health consequences associated with untreated sleep apnea including heart disease, hypertension, strokes and accidents.

The patient should follow-up with his primary physician, Dr. Petruncio, and with Dr. Morley in the Sleep Clinic.

Dictated by: Thomas F. Morley, DO, FCCP, DABSM
Diplomate of The American Board of Sleep Medicine

Signed by: Thomas F. Morley, DO, FCCP, DABSM on 04/15/2004 @ 04/15/2004
08:17:49

TFM/kk

cc: Dr. Petruncio
Dr. Morley

University Otolaryngology Associates

Patient name: Conrad, Robert
 Date: 9/23/04 Liberty/Conrad 1238
 DOB: 2/26/55
 Referral:
 Doctors: PETRUNCIO,

HPI: Dx: severe apnea
 using CPAP
 says the symptoms are
 not bad

got new mask a few days
 ago & improvement

Multi Vit.

Zedra - anti cholest.

PMHx: HTN, GOUT
 PSHx: Gall bladder
 FamHx: J

Heart Cath
 11/03
 min
 heart
 plaque

SocHx:

Meds:

Celebrex

Verapamil

Vasotec

Mecidia - appt. to suppress

Zolof

HCTz - Hydrocortisone

Alopecia

ROS

Δ in hearing

dysphagia

seasonal allergies

severe headaches

dysequilibrium

sinusitis

heart burn

neck pain

Allergies:

T: W/KDA

P: 60 330

R: 16

BP:

Normal:

- ☐ Auricles
- ☐ Canals
- ☐ TMs
- ☐ Middle ears



Normal:

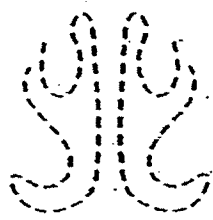
- ☐ CN II-XII
- ☐ Romberg
- ☐ Fukuda
- ☐ Cerebellar
- ☐ Gait

Tuning Fork Testing

	R	L
256		
512		
1024		

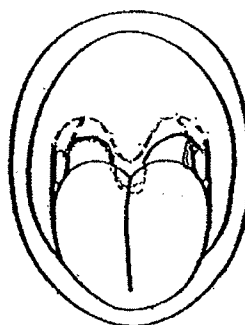
Normal:

- ☐ Septum
- ☐ Inf. turbs.
- ☐ Mid. turbs.
- ☐ Mucosa
- ☐ Nasal airway
- ☐ Dorsum
- ☐ Tip/ala



Normal:

- ☐ Lips
- ☐ Mucosa
- ☐ Gingiva
- ☐ Skin
- ☐ Teeth
- ☐ Floor of mouth
- ☐ Ant. 2/3 tongue
- ☐ Post. 1/3 tongue
- ☐ Tonsil pillars
- ☐ Tonsils
- ☐ Post. wall



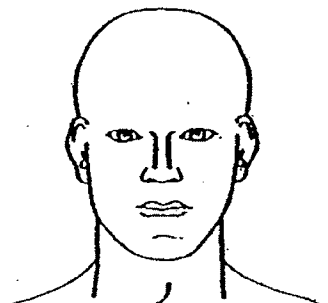
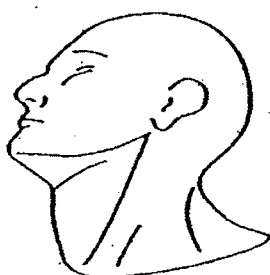
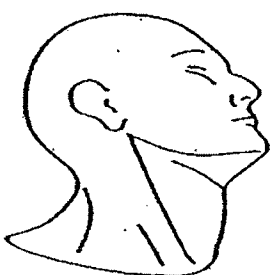
Nasal Endoscopy (p.2)

Nasopharyngoscopy (p.2)

Laryngoscopy (p.2)

Normal:

- ☐ Skin
- ☐ Facial bones
- ☐ Mandible
- ☐ Airway
- ☐ Nodes
- ☐ Thyroid
- ☐ SCM
- ☐ TMJs



OCT 20 2004

Assessment/Plan:

O/A

need to review PSG's

discussed UPPP risks/benefits

?TAT's

9/24/04 -
 phone
 at -
 discussed
 PSG's -
 still tired
 rec. repeat

Liberty/Conrad 1239

University Otolaryngology Associates

Endoscopic Evaluation

Patient name: *Conrad, Robert*Date: *9/23/04*

DOB:

Referral:

Doctors:

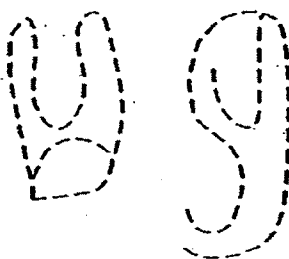
Indications: ☐ Hoarseness ☐ Anosmia ☐ Neck mass
☐ Dysphasia ☐ Halitosis ☐ Evaluation for decannulation
☐ Odynophagia ☐ Stridor ☐ Cancer follow-up
☐ Snoring ☐ Cough ☐ R/O foreign body
☐ Apnea ☐ Choking ☐ R/O aspiration

Premedications: None Xylocaine Pontocaine Oxymetazoline Ephedrine

Nasal endoscopy: Flexible laryngoscope Rigid rhinoscope 0 30 70

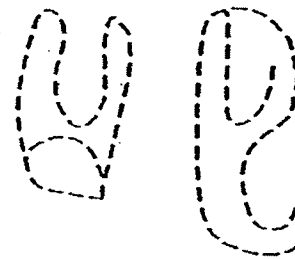
RIGHT

Normal:



Normal:

LEFT



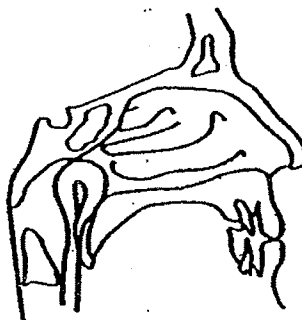
Middle turbinate
 Uncinate
 Infundibulum
 Olfactory region
 Frontal recess
 Maxillary ostium
 Sphenoid ostium

Normal:

☐ Soft palate
☐ Lateral pharyngeal walls
☐ Posterior pharyngeal wall
☐ Nasopharyngeal airway

Laryngoscopy:

☐ Flexible laryngoscope
☐ Mirror



☐ Base of tongue
☐ Lateral pharyngeal wall
☐ Pyriform sinus
☐ Epiglottis
☐ Aryepiglottic folds
☐ Arytenoids
☐ Posterior commissure
☐ False vocal cords
☐ True vocal cords
☐ Anterior commissure
☐ Petiole
☐ Vocal cord mobility
☐ Glottic airway
☐ Subglottic airway
☐ Mueller maneuver

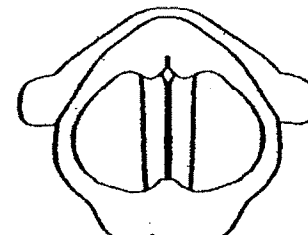
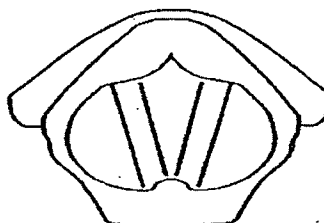
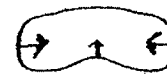
OCT 20 2004
p.2

EXHIBIT 7

SOM-Sewell Internal Medicine

Kennedy Professional Center #A-1 445 Hurffville-Crosskeys Road Sewell, NJ 08080
(858) 589-6728 Fax: (856) 256-1266

July 27, 2004

Page 1

Chart Document

ROBERT CONRAD
DOB: 02/28/1955 MRN: 388920

07/23/2004 - Transcription:

Provider: Thomas Morley DO, FCCP, FACOI

Location of Care: School of Osteopathic Medicine

July 22, 2004

George J. Petruncio, M.D.
Fries Mill Pavilion, Suite E1
188 Fries Mill Road
Turnersville, NJ 08012

RE: Robert Conrad

Dear Dr. Petruncio:

Thank you for the opportunity to reevaluate Mr. Conrad in our office today regarding his obstructive sleep apnea syndrome.

Since the patient's last visit back in April 2004, we had attempted to increase his CPAP up to 11 cmH2O pressure because of persistent hypersomnolence. He has been frustrated recently that he is still having very significant problems with excessive sleepiness. He is having an inability to perform his job as a broker effectively and it is beginning to significantly impact his ability to support his family. Until recently he has been extremely compliant with his CPAP machine. Over the last several weeks, he has been less compliant, I think because of the frustration more than anything else. He is not having problems with discomfort from the machine. He has had no skin breakdown or facial discomfort, he is not having any nasal congestion, and he seems to tolerate it fairly well. Unfortunately, he is still having problems with excessive sleepiness as I noted above.

PHYSICAL EXAMINATION: His physical examination is essentially unchanged from the prior dictation. His weight remains excessive at 325 pounds.

IMPRESSION:

1. Severe obstructive sleep apnea syndrome.
2. Exogenous obesity.
3. History of hypertension.
4. History of depression.
5. Other medical as noted previously.

RECOMMENDATIONS: At this time, I told the patient it is imperative that he use his CPAP machine. I want him to get back on his nasal CPAP at 11 cmH2O pressure. I told him that if he does not continue with this treatment, he is likely to have persistent and more severe symptoms; not to mention the risk of heart disease, hypertension, and accidents. I told him he clearly needs to undergo significant weight reduction, which I think could reduce the severity of his obstructive sleep apnea syndrome. I started him on Provigil 200 mg p.o. daily in order to try and alleviate some of his excessive sleepiness. I told him if he continues to have problems with excessive sleepiness, we may need to try other stimulants such as Ritalin or even Adderall. Finally, I

Liberty/Conrad 1279

EXHIBIT 8



SCHOOL OF
OSTEOPATHIC
MEDICINE

University of Medicine & Dentistry of New Jersey

Liberty/Conrad 1200

Department of Medicine

September 16, 2004

George J. Petruncio, M.D.
Pries Mill Pavilion, Suite E1
188 Pries Mill Road
Turnersville, NJ 08012

RE: Robert Conrad

Dear Dr. Petruncio:

Thank you for the opportunity to reevaluate Mr. Conrad in our office today regarding his obstructive sleep apnea.

Since the patient's last visit back on July 22, 2004, he has continued to have problems with some excessive sweating and fatigue. He has been evaluated by Dr. DePace for possible coronary disease. The patient states he had a stress echo performed this week, which was negative. As far as his use of the CPAP is concerned, we have empirically increased him up to 11 cmH2O pressure. He states he uses the CPAP from about 10 p.m. when he goes to bed until about 8:30 a.m. when he awakens. He has the CPAP in place the entire night. However, he states that 2 or 3 times, he has awakened and the CPAP is displaced. He believes he is pulling it off during the night. He is not really aware that he is doing this. He does not have any facial ulcerations or nasal discomfort. He has no nasal congestion. Overall, he feels he is tolerating the CPAP much better. He is not having frankly pathologic sleep. He denies falling asleep while driving, during conversation, or meals. However, he states his concentration remains poor and he does not feel back to his baseline levels.

MEDICATIONS: His medications include Vasotec, verapamil, allopurinol, Zolof, multiple vitamins, and hydrochlorothiazide. He had tried Provigil, at my recommendation, however, he did not have any improvement after 30 days and he subsequently did not renew the medication.

PHYSICAL EXAMINATION: His physical examination is essentially unchanged from prior dictation. His weight remains excessive at 324 pounds and his height is 5 feet and 11 inches. Heart rate and rhythm regular without murmur S3 or S4. Lungs are clear. Extremities reveal a trace of edema at the ankles.

IMPRESSION:

1. Severe obstructive sleep apnea syndrome.
2. Exogenous obesity.
3. History of depression.
4. History of essential hypertension.

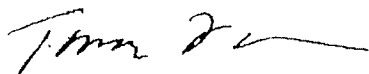
RECOMMENDATIONS: At this time, I was reluctant to start the patient on Ritalin or Adderall. It is not clear that his primary symptoms are excessive sleepiness at this point. It appears that he has more fatigue than sleepiness. I elected to try and increase his CPAP up to 11 cmH2O pressure.

04/26/1994 02:58 6892620428

I have also instructed him that he needs to maximize his use of the CPAP. Because of the displacement, I told him it may be necessary to increase the tension on his CPAP harness in order to decrease the number of displacements per night. I told him to keep working on his weight loss, and I will see him again for a routine follow up in four weeks. It may be that the patient needs to stay on disability a while longer until he can get better control of his symptoms.

Thank you for the opportunity to reevaluate this very nice gentleman.

Sincerely,



Thomas F. Morley, D.O., F.C.C.P., D.A.B.S.M.
Professor of Medicine
Diplomate, American Board of Sleep Medicine
TFM/mts/tpy/kap
d: 09/16/2004 1520 PST
t: 09/20/04 1047 EST
27002681



EXHIBIT 9



"Michael, Harriet"
 <Harriet.Michael@LibertyMutual.com>
 03/08/2005 03:18 PM

To: <angela.thomas@wachovia.com>
 cc:
 Subject: RE: Roben Conrad

On 12/22/03 Mr. Conrad called in a claim with the date of disability as 11/25/03. He returned to work 12/1/03, the seventh day from his date of disability, therefore he did not satisfy the eight day elimination period.

On 1/19/04 the claim was closed for failure to provide proof as we had not received medical information from his physician.

On 1/20/04 the following claim note was added.

[01/20/2004 - DARBY, TOSHA]10:22 - Claimant r/c to discuss claim....explained to him that we had sent request for meds to Dr. Petrunzio's office; however, to date, we have not gotten a response....also needed to get some general info from him regarding reason for filing claim....clmt then began to explain he had began loosing weight, rapidly and unintentional, in September....by October, he was feeling bad...lost appetite....was seeing MD on weekly basis....week of Thanksgiving, he was admitted to hospital...11/24/03 and D/C on 11/28/03....continued with sx's after D/C....had endoscopy and coloscopy...hasn't had sleep test yet...had planned to have done in December, but did not have time....clmt further explained he works in production sales...his production was affected and his sales were down....actually RTW on 12/1/03....he explained he was there, but he wasn't....he came back to do what he had to do to keep bringing home a paycheck....he explained to do his job, one has to have the proper attitude, ambition to sale the product....he did not have this....was sick....although feeling some better now....not fully recovered....I again confirmed with clmt that throughout this entire time, he only missed 11/24/03 thru 11/30/03 from work....he advised this was true....I then explained that he had not satisfied EP; therefore, would not qualify for std benefits....clmt then explaining that he was physically at work, but really not there....not himself....he asked if there was something set up for an ongoing illness....as I began to explain intermittent, he stated whatever is going to be, is going to be....he said he wished he would have known this then....would have remained out of work for the entire month of November....he added he deals with disability products, but was not aware that Wachovia's plan had an EP....explained that since he had not satisfied EP, we would not be able to consider claim; however, going forward, if sx's reoccur or something else comes up....if he misses at least eight days from work, he can file claim....clmt advised he understood.

Harriet Michael
 Appeal Review Consultant
 Liberty Mutual/Group Market Claims
 Phone: 800-291-0112 Ext 344 SON: 8-675-2344

Wachovia/Conrad 167

Fax: 888-443-4212

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-----Original Message-----

From: angelia.thomas@wachovia.com [mailto:angelia.thomas@wachovia.com]
Sent: Tuesday, March 08, 2005 3:02 PM
To: Michael, Harriet
Cc: angelia.thomas@wachovia.com; tandace.martz@wachovia.com
Subject: RE: Robert Conrad

Harriet,

Mr. Conrad had a phone conversation with his case manager in 2003. Can you pull that call?
 Also, can you give me the timeframe he was approved for in 2003.

"Michael, Harriet" <Harriet.Michael@LibertyMutual.com>

02/16/2005 10:36 AM

To: <angelia.thomas@wachovia.com>

Cc: <tandace.martz@wachovia.com>

Subject: RE: Robert Conrad

He has an approved LTD claim 2021495 currently. His date of disability was 8/3/04 and his LTD benefit begin date was 2/1/05. In December he was on approved STD leave. I'm confused. What is he requesting? He received STD leave.

If he was calling in a claim but a claim was not initiated and no claim number was given, then there is no documentation of the call to research.

Harriet Michael
 Appeal Review Consultant
 Liberty Mutual/Group Market Claims
 Phone: 800 291-0112 Ext. 344 SDN: 8-675-2344
 Fax: 888-443-4212

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Wachovia/Conrad 168

via telephone at 800.291-0112 Ext. 344 and permanently delete the original and any copy of any e-mail and any printout thereof.

-----Original Message-----

From: angelia.thomas@wachovia.com [mailto:angelia.thomas@wachovia.com]
Sent: Wednesday, February 16, 2005 10:26 AM
To: Michael, Harriet
Cc: tandace.martz@wachovia.com
Subject: Robert Conrad

Harriet,

Can you go back to the call log for December. Mr. Conrad states that he submitted a claim for STD in December. He was contacted by a rep. and she informed him that his doctor had not sent the form back. In the course of their conversation, he states that he told the rep. that he was unable to perform his entire work tasks but was able to answer phone calls from clients and likely to continue servicing his client who called in. She then told him that his claim would probably get turned down for benefits any way so he dropped the claim.

I need some information on this because he now filing a claim stating that the rep. should not have told him this information because his sickness now goes back to December when he placed the call. He has been approved for LTD. Your help is greatly appreciated.
ForwardSourceID:NT0001368A

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